

Tennessee Department Of Transportation

Petition For Declaratory Order
Notice Of Hearing

Pursuant to Tennessee Code Annotated § 4-5-224, the Tennessee Department of Transportation gives the following notice of hearing on a petition for declaratory order:

1. Petitioner:

Elevation Outdoor Advertising, LLC
Mr. Martin B. Daniel, General Manager
5201 Kingston Pike, Ste. 6 #138
Knoxville, Tennessee 37919

2. Summary of the relief requested:

The Petitioner requests a declaratory order from the Tennessee Department of Transportation declaring that the failure of an outdoor advertising permit holder to renew his permit by December 31, 2007 automatically renders his permit void on January 1, 2008. The Petitioner also requests a declaratory order from the Tennessee Department of Transportation declaring that its application for an outdoor advertising permit filed on January 11, 2008 attained first-in-time priority over other subsequently-filed permit applications within the prohibited distance.

3. Statutes that the Tennessee Department of Transportation is called upon to interpret or upon which it is to rule:

- Tenn. Code Ann. § 54-21-104, which provides in pertinent part as follows:

- (c) All tags issued shall be permanent; however, permits shall be renewed annually between November 1 and December 31, and the commissioner shall charge the sum of forty dollars (\$40.00) for 2008, fifty dollars (\$50.00) for 2009, sixty dollars (\$60.00) for 2010, and seventy dollars (\$70.00) for 2011 and thereafter for annual renewal of each permit.

- Tenn. Code Ann. § 54-21-105, which provides as follows:

- (a) (1) Any person, either owner or lessee, of any outdoor advertising who has failed to act in accordance with the provisions of § 54-21-104 shall remove the same immediately.
- (2) Such failure shall render the outdoor advertising a public nuisance and subject to immediate disposal, removal or destruction.
- (3) In addition, such failure constitutes a Class C misdemeanor. Each separate day of violation constitutes a separate offense.
- (4) In addition, or in lieu of the foregoing, the commissioner may enter upon any property on which outdoor advertising is located and dispose of, remove, or destroy the same, all without incurring any liability for such actions.
- (b) Prior to invoking the provisions of this section, the commissioner shall give notice either by certified mail or by personal service to the owner of the sign, or occupant of the land on which the advertising structure is located. Such notice shall specify

the basis for the alleged unlawfulness, shall specify the remedial action which is required to correct the unlawfulness and shall advise that a failure to take the remedial action within thirty (30) days will result in the sign being removed. The owner of the structures shall be liable to the state for damages equal to three (3) times the cost of removal, in addition to any other applicable fees, costs or damages, but the owner of the land on which the sign is located shall not be presumed to be the owner of the sign simply because it is on the owner's property.

- TDOT Rule 1680-2-3-.03(1)(a)(6), which provides as follows:

- (ii) The permit and tags shall be void January 1 of each year, if renewals for the year are not completed between November 1 and December 31 inclusive.

5. Date, Time and Place of Hearing:

A contested case hearing for this matter is scheduled for Monday, September 8, 2008, at 9:00 a.m., in the Department of Transportation's Region III Offices, 6601 Centennial Blvd., Nashville, Tennessee, in the first floor conference room.

6. Administrative Procedures Division Docket Number 22.01-099280J

Submitted for publication by:

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The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the Department of State on the 19th day of June, 2009. (FS 06-17-08; DBID 06-17-08)